

REMARKS

The present communication is filed in response to the Official Action mailed May 4, 2007, rejecting all the claims presently pending in the application ("Official Action"). A three-month extension of the time to respond, up to and including November 4, 2007 is filed concurrently herewith.

Status of Claims

Claims 1-8 and 10-19 remain pending in the application. Of these claims, claims 1, 14 and 19 are independent claims. All the other claims pending in the application depend from one of these independent claims.

All the claims pending in the application were rejected in the Official Action. Although the claims have not been amended in the present communication, applicants have included a listing of the claims for the Examiner's convenience. Further, as is discussed in detail below, applicants respectfully traverse the Examiner's rejection of the claims.

Summary of Claimed Subject Matter

The claimed invention is generally directed to a system that includes two hand-held units that allows an operator to remotely monitor the status of a food item as it is being cooked. (Specification, ¶ [0021].) A first hand-held unit is conveniently located adjacent to the food being cooked. (Id.) The first unit receives the internal temperature of the food being cooked from a temperature sensor to which it is connected. (Id., [0027].) The system further includes a microprocessor that allows the user to set a taste preference and choice preference. (Id., [0020], [0028].) The system also includes a second hand-held unit that wirelessly communicates with the first unit. (Id., [0025].) The second unit advantageously

allows a user to move away from the cooking location while the food is being cooked. (*Id.*, [0009].) The claimed invention therefore solves a need not disclosed or suggested by the prior art in that the hand-held units allow for user mobility yet while allowing a particular food item to be monitored and cooked to the user's desired taste preference.

Each of the independent claims are directed to a novel and non-obvious combination for a wireless thermometer system. When considered as a whole, the overall combination recites functional and other differences that can hardly be regarded as inconsequential.

In particular, claim 1 recites "said system including at least one microprocessor operative to calibrate a taste preference and a choice preference associated with the food being cooked." Claim 14 similarly recites "a micro-processor operable to establish a temperature setting based on the meat selection preference and the taste selection preference, monitor the temperature sensor reading and communicate the temperature sensor reading to the radio frequency transmitter." Claim 19 also recites "a microprocessor capable of calibration for taste preferences associated with said food being cooked is provided in said second hand-held unit." As is discussed in further detail below, none of the prior art references cited by the Examiner disclose this feature of the claims.

In addition, each of the independent claims also recite a second hand-held unit that receives temperature readings sent from the first hand-held unit via a radio frequency receiver. This feature is also not disclosed in the prior art cited by the Examiner. Thus, for this additional reason, the claimed invention is further non-obvious.

Rejections

Claims 1, 3-5, 8, 10, 12, 14-15 and 19 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 5,939,974 to Heagle et al. ("*Heagle*") in view of U.S. Patent 6,000,845 to Tymkewicz et al. ("*Tymkewicz*"). (Official Action 2.) In rejecting these claims, which includes all the independent claims pending in the application, the Examiner asserts that *Heagle's* second unit is a computer (Col. 11, ll. 4-15 and Col. 17, ll. 31-39), which, inherently, includes a microprocessor and a display. (*Id.*) The Examiner acknowledges, however, that "*Heagle* does not explicitly teach that the microprocessor is operable to calibrate a taste preference/choice preference (beef, chicken, etc., rare, well done, etc.), [and that] the second unit is a hand held (portable) unit. . . with the remaining limitations of claims 1, 3-5, 8, 10, 12, 14-15 and 19." (*Id.* at 2-3.)

Although the Examiner concedes that *Heagle* does not disclose a second hand held unit, she asserts that "making the [second] unit hand held/portable would not render the claims patentable since it is not regarded as inventive to merely make an old device portable or movable without producing any new and unexpected results. See *Ranco, Inc. v. Gwynn et al.*, 128 F.2d 437 [54 USPQ 3]." (*Id.* at 3.) Thus, the Examiner concludes that it would have been obvious to one skilled in the art at the time of the invention to modify the second unit so as to make it hand-held or portable. (*Id.*)

With regard to the deficiency in *Heagle* of not disclosing either taste or choice preference, the Examiner asserts that *Tymkewicz* makes up for this deficiency. Thus, the Examiner concludes that the combination of *Heagle* and *Tymkewicz* renders each of the independent claims, claims 1, 14 and 19, and the other claims identified above, obvious. (*Id.* at 3-5.)

Claims 6 and 16 were also rejected under §103(a) as being unpatentable over *Heagle* and *Tymkewicz*, as discussed above, and further in view of U.S. Patent 6,080,972 to May ("May"). (Official Action at 4.) With respect to May, the Examiner asserts that this reference "discloses a device in the field of applicant's endeavor wherein a remote second unit/personal computer having a microprocessor and video and sound (noise generating) interface." (*Id.* at 4.) The Examiner also independently rejects claims 6 and 16 as being unpatentable over *Heagle* and *Tymkewicz* further in view of U.S. Patent 5,378,874 to Holling et al. ("*Holling*"). In this regard, the Examiner only relies on *Holling* for disclosing "a remote (second) unit having an alarm (noise generating device)." (*Id.* at 6.)

Claims 2 and 13 were rejected over *Heagle* and *Tymkewicz* and further in view of U.S. Patent DES 418,069 to Chung et al. ("*Chung*"). (Official Action at 4-5.) The Examiner relies on *Chung* for disclosing "a first hand-held unit having a curved rigid probe and a flexible cable (communication line)." (*Id.* at 5.) The Examiner also asserts that Chung's device "has a display selectively displaying food data/meat selection/choice (i.e., beef, chicken, etc.), and thus inherently a processor (microprocessor) operative to calibrate for said meat selection/choice." (*Id.*)

Claims 7, 11 and 17 were rejected as being unpatentable over *Heagle* and *Tymkewicz* and further in view of U.S. Patent 4,131,786 to Cooper ("*Cooper*"). (*Id.*) The Examiner relies on *Cooper* for disclosing "a first unit and a remote control (second) unit 28 having an on/off, display, cooking temperature and duration control button 24." (*Id.* at 6.)

Claim 18 was rejected as being unpatentable *Heagle* and *Tymkewicz* and further in view of U.S. Patent 5,983,783 to

Archard ("Archard"). (Id. at 7.) The Examiner relies on Archard for disclosing "a first hand-held unit displaying taste preferences such as medium, medium rare, rare, well done." (Id. at 7.) The Examiner also relies on Archard's device for having "an alarm/audible signal (noise-generating unit) indicating that the temperature corresponding to the taste preferences (established/preprogrammed) has been reached." (Id.)

Applicants address the rejections to each of the independent claims and each of the references below.

Argument

(1) Claims 1, 14 and 19 are not obvious.

All the claims were rejected under 35 U.S.C §103(a) as being unpatentable over *Heagle* in combination with one or more other references (*Tymkewicz*, *Chung*, *May Holling* and *Archard*). Although the Examiner acknowledges that *Heagle* does not disclose a microprocessor or second hand-held unit as claimed, she asserts that the other references and other teachings known in the art render the claims obvious. Applicants respectfully submit, however, that none of the references disclose a microprocessor as claimed. In addition, the recital of a portable second hand-held unit is only regarded as insignificant by the Examiner because it is considered independently of the claimed invention as a whole. But even the recent *KSR International Co. v. Teleflex Inc. et al.* Supreme Court decision made it clear that "a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in a prior art." *KSR Int'l Co.*, 127 S.Ct. 1727 (2007).

(a) None of the references disclose a microprocessor as recited in the claims.

The Examiner's primary reference is *Heagle*. In that regard, the Examiner acknowledges that *Heagle* does not

"explicitly teach" a microprocessor that is "operable to calibrate a taste preference/choice preference (beef, chicken, etc., rare, well done, etc.)." (Official Action at 2-3.) The Examiner asserts, however, that *Tymkewicz* makes up for this deficiency in *Heagle* by disclosing "a microprocessor operative to calibrate (establish temperature setting) for taste reference (medium, rare, etc.) and choice preference (beef, poultry, etc.) associated with a food being cook." The Examiner also asserts that the *Chung* reference "has a display [for] selectively displaying food data/meat selection/choice (i.e., beef, chicken, etc.), and thus, inherently a processor (microprocessor) operative to calibrate for said meat selection/choice." (*Id.* at 5.) The Examiner further asserts that the *May* reference discloses a "personal computer having a microprocessor." (*Id.* at 4.) We address each of the Examiner's assertions and the references in turn.

Tymkewicz discloses a temperature sensing and indicating device that includes a housing and an arm that is retractable into and out of the housing. (*Tymkewicz*, abstract.) Although *Tymkewicz* discloses use of a microprocessor in his device, the microprocessor is not disclosed as being "operative to calibrate a taste reference and a choice preference associated with the food being cooked," as is recited, for example, in claim 1. Rather, *Tymkewicz* clearly discloses that the microprocessor is only used to account for the difference between the actual measured temperature and the "temperature-proportional digital signal." (*Id.*, col. 2, 11.31-39; col. 6, 11.21-40; col. 7, 11.27-30.) Even the claims in *Tymkewicz* make it clear that the microprocessor is only disclosed as being operative to perform that function. (*Id.*, see claims 9 and 15.) Significantly, *Tymkewicz* does not disclose his processor as

being operative to select a meat preference or choice preference.

More specifically, FIG. 7 of *Tymkewicz* and its accompanying description make it clear that it is the user who determines the choice preference by viewing "the analog indication 242 in relation to the indication of the appropriate cooking temperature for a food substance to make an immediate and accurate determination of the cook status of food substance." (*Id.*, col. 7, 11.55-59.) Thus, *Tymkewicz* is not only deficient in that it does not show a microprocessor as claimed, but it also teaches away from using a microprocessor to calibrate a taste preference and a choice preference associated with the food being cooked. To be clear, it teaches that the user has to make the determination of taste preference. This teaching is clearly in line with the prior art, but is expressly opposite to the claimed invention.

Further in that regard, although the Examiner does not assert that *May's* device is operable to calibrate either a taste preference or meat selection, it is instructive that *May* teaches an entirely different way of cooking food to a desired choice. *May* discloses a "universal programmable oven system [that] uses a microprocessor based control board to control the current flowing into a bank of heating elements." (*May*, col. 5, 11.46-50.) The system includes a front panel that is located on the oven and remotely located personal computer that can be used to control the front panel. (*Id.*, FIG. 2 and col. 5, 11.1-3; FIG. 4 and col. 8, 11.11-14.) The system provides "the selection of four operational functions: Preheat, Roast, Probe and Hold." (*Id.*, col. 6, 11.14-16.) The oven unit also includes a timer unit and a display unit. (*Id.*, col. 6, 11.21-40.) The display unit can display the actual and set temperature for the food being cooked. The remote personal computer is used to control

the functions of the oven available on the front panel. (*Id.*, col. 8, 11.21-31.) *May*, however, does not disclose that the microprocessor is operative to calibrate a taste or choice preference. In fact, what *May* does disclose is that in cooking food a user can use all the keys on the front panel (or control them remotely via a computer) by setting the time and temperature sequence. (*May*, FIG. 3 and accompanying description.) But that is no different than *Heagle*.

The Examiner also asserts that *Chung* "inherently" discloses a process "microprocessor" operative to calibrate for meats selection/choice. Although *Chung* may show a meat selection and temperature on its display, the Examiner makes a large leap in assuming that *Chung* includes a microprocessor. In this regard, *Archard* is instructive. In fact, *Archard* shows an electronic chef's fork that includes a display, which coincidentally is labeled "BEEF," as well as discrete word areas 31, 32, 33 and 34 are labeled with words generally associated with a doneness level. However, *Archard* does not disclose a microprocessor nor discloses that such a processor is necessary to carry out its function.

Indeed, FIG. 7 of *Archard* clearly establishes that a microprocessor is not necessary to perform the functions asserted as being performed by a microprocessor in *Chung*. Indeed, *Archard's* FIG. 7 "discloses digital circuitry of the preferred embodiment." (*Archard*, Col. 6, 11.21-34.) Although that circuitry is described as capable of being included on a chip, nowhere does *Archard* teach it may comprise a microprocessor. Rather, *Archard* teaches that a microprocessor is not needed. Therefore, *Archard* establishes that *Chung's* design patent does not "inherently" include a transmitter. Inherency after all, cannot be established by mere probabilities or possibilities. (H.P.E.P. §2112, p. 2100-47.)

(b) *A Second Hand Held Unit is not disclosed.*

To overcome the deficiency in *Heagle* of not disclosing a second hand-held unit, the Examiner initially asserts that making the second unit hand-held would not render the claims patentable. (Official Action 3.) The Examiner supports this conclusion by noting that "merely making an old device portable and movable without producing any new and unexpected results" does make that device patentable. (*Id.*) Applicants respectfully submit that this conclusion is reached only by viewing the claim elements in isolation, rather than the entire combination as a whole. In that regard, when viewed as a whole the claimed system does not make "an old device portable." This is so because the prior does not disclose the claimed system. In particular, the prior of record requires that the user return to a particular location to determine whether food is cooked to his/her satisfaction each and every time.

As previously noted above, the Examiner also asserted that *May* makes up for the other deficiency in *Heagle* by disclosing "a second unit/hand-held unit/personal computer." (Official Action 4.) Applicants respectfully submit that *May* does not disclose a second hand held unit at all. *May* discloses a desktop personal computer. (*May*, see FIG. 4 and its accompanying description.) As clearly seen in FIG. 4 and described by *May*, the personal computer 200 is not portable. In addition, the Examiner provides no reason why a personal desktop computer as disclosed by *May* would be considered by anyone to be a hand held device. Indeed, even to this day, no one walks around with a desktop computer or considers it a portable device. For at least this reason, applicants respectfully submit that *May* does not make up for the deficiency in *Heagle* of not disclosing or suggesting a second hand-held device.

As applicants have previously noted in the prosecution

of the parent application to the present application, May only discloses a remotely programmable oven controller. (May, Col. 5, ll. 46-50) Although the oven controller may be controlled remotely, it is only disclosed as being controlled by a personal computer. (Id., Col. 8, ll. 10-20.) Furthermore, while May discloses that the personal computer includes software for communicating with the oven panel shown in FIG. 2, May includes no disclosure of taste preferences for different types of food as asserted by the Examiner. In particular, May specifically discloses that the operator has to put in a program sequence to cook the food. (Id., FIG. 3 and accompanying description.) Thus, it is clear that a taste preference selection is not provided by the computer. Indeed, if May taught a taste preference, there would be no need for the operator to input a program sequence. (Id., Col. 7, l. 33- Col. 8, l. 36).

Applicants further respectfully submit that U.S. Patents 4,131,786 to Cooper ("Cooper") and 5,378,874 to Holling et al. ("Holling") do not make up for the deficiencies discussed above for Heagle, Chung, Tymkewicz, Archard and May. In particular, Cooper's remotely controllable electric oven, like May's remotely controlled oven, requires that user program the cooking sequence and does not teach or suggest a taste preference setting, nor does it include an LCD. Other than teaching a noise generating device, applicants respectfully submit that Holling is not pertinent.

(c) *Secondary Considerations*

(i) *Commercial Success*

In accordance with the factual inquires for determining obviousness, applicants respectfully submit the enclosed Declaration of Peter A. Chapman under 37 C.F.R. §1.132 providing evidence of non-obviousness ("Chapman Decl.").

As stated in the declaration, a wireless meat thermometer system within the scope of the claimed invention has been offered for sale by the assignee of the present application (Maverick Industries, Inc.) since 2000. (Chapman Decl. ¶6.) In fact, by 2001, the claimed system had gained considerable fame and notoriety as evidenced by a November 22, 2001 article in The New York Times. (*Id.*, ¶8, Exh. 3.) That article describes Maverick's REDI CHEK wireless meat thermometer system, which was the first wireless meat thermometer system introduced on the market. (Chapman Decl. ¶6.) Indeed, by the time the article was published Maverick had sold over 50,000 units. (Chapman Decl. ¶7.)

As shown by the November, 2001 article, the wireless meat thermometer system sold by applicants is covered by the claims of the present application. (*Id.*, ¶8 Exh. 3.) In particular, the system includes first and second hand-held units that communicate temperature readings taken by the first hand-held unit via radio frequency signals (*Id.*). The system includes a microprocessor that is operative to calibrate meat and taste preference. Further, the second hand-held unit includes a receiver and displays temperature readings receives from the first unit. In addition, the system could be programmed to "beep" when a certain temperature was reached. (*Id.*)

Since that time, the claimed system has enjoyed considerable success. For example, since first introducing a wireless meat thermometer system in 2000, the assignee of the present application has sold over 750,000 wireless meat thermometer systems (*Id.*, ¶10, Exhs. 1, 2, 4 and 5.) The sales charts in these exhibits demonstrate the commercial success of the claimed system. In particular, these charts show that since its introduction, the wireless thermometer system sold by the

assignee averaged sales of more than 100,000 units per year. These sales figures are particularly significant since prior to applicants' introduction of a wireless meat thermometer system such systems were not available on the market. (Chapman Decl. ¶10.) Indeed, applicants created a new market for such systems. A market in which more than three-quarters of a million wireless meat thermometer systems covered by the claims of the present application, and similar to that shown in The New York Times Article, have been sold by Maverick. (Chapman Decl., ¶10, Exhibits 1, 2, 4 and 5.)

Significantly, since first introducing wireless meat thermometer systems to the market, such systems have become the number one volume dollar seller of Maverick's business. (*Id.*, ¶12, Exhs. 1, 2, 4 and 5.) This is particularly significant since prior art systems similar to *Chung's* and *Archard's* (see pages 2 and 5 of Exh. 8 to Chapman Decl.) continue to be sold as competing products. Thus, the volume of sales by Maverick alone demonstrates the commercial success of the claimed system in creating an entirely new market. In this regard, applicants are entitled to protection of their invention in the new market they created.

(ii) Copying

Further establishing the commercial success of the claimed invention is the compelling evidence of copying by several competitors to the assignee. (*Id.*, ¶11.) Such wireless meat thermometer systems include those sold by:

- Brookstone (see Exh. 6)
- Weber (see Exh. 7)
- Taylor (see Exh. 8)
- Oregon Scientific (see Exh. 9)
- JLR Gear (see Exh. 10)

(Chapman Decl., ¶11.) Each of these systems are covered by the claimed invention. The evidence of copying is particularly compelling since almost all of these vendors tout the wireless remote and taste preference features in advertising their products. (See *Id.*, Exhs. 6-9.) For example, the unit at Exhibit 6 is advertised as having the following "KEY FEATURES": (1) Wireless Transmitter; (2) Wireless LCD Receiver; and (3) Cook Meat To Perfection. (See, Exh. 6 at 1.) In Exhibit 7, the system is described as a "remote system" that "always knows when perfectly done is about to become over done." (See, Exh. 7.) In Exhibit 9, the unit is described as a "Wireless BBQ Thermometer" that "alerts you when the meat has reached the perfect temperature." (See, Exh. 9 at 1.) These are the very features of the claimed system, which as argued above, do not render the claims obvious. That is, each of these systems includes two hand-held units that communicate wirelessly to indicate to a user that food is cooked to a desired taste.

2. Summary

Applicants respectfully submit that in-view of the above arguments, each of the claims are allowable and respectfully request same. In particular, in view of the deficiencies in the prior art and the secondary evidence of non-obviousness, applicants respectfully submit that each of the foregoing claims are not rendered obvious.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

Application No.: 10/733,129

Docket No.:MAVERICK 3.0-004
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If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: November 1, 2007

Respectfully submitted,

By 

Orville R. Cockings

Registration No.: 42,424

LERNER, DAVID, LITTENBERG,

KRUMHOLZ & MENTLIK, LLP

600 South Avenue West

Westfield, New Jersey 07090

(908) 654-5000

Attorney for Applicants

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